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The Province of Alberta

IN THE MATTER OF "THE NATURAL
GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into
Scheme to be adopted for Gathering,
Processing and Transmission of
Natural Gas in Turner Valley

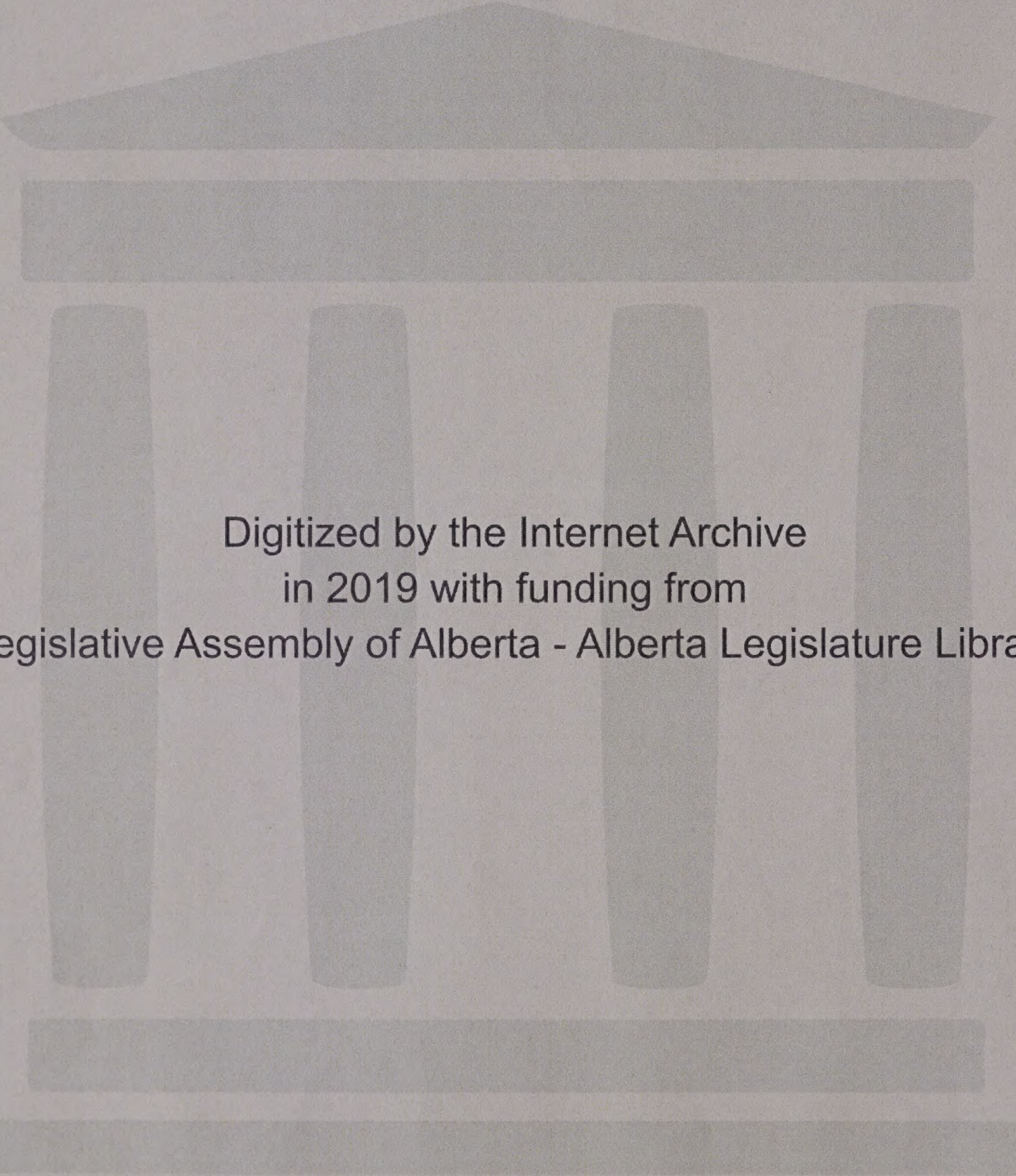
G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

CALGARY, Alberta May 7th, 1945.

VOLUME 26



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9.30 A.M. Session
May 7, 1945.

THE CHAIRMAN: Before we start the Hearing this morning, some of the parties desire to have some indication from the Board as to what it is going to do in July and August. The Court Reporters will be holidaying and cannot carry along with two, we need at least three and they have to be accommodated and possibly the Gentlemen of the Bar who have some ideas of the sort as well. I would like to hear from you on this point so that we can make some arrangement as to adjourning and for how long. Mr. Fenerty, I think your habit is to go away for all of July as a rule is it not?

MR. FENERTY: My own view is that an Inquiry of this nature and this length, notwithstanding what might have been done on other occasions, that we should not attempt to sit during the Court long vacation. That is just about what I think in a nutshell.

THE CHAIRMAN: Have you any ideas, Mr. Chambers?

MR. CHAMBERS: As a matter of general policy I am in favor, not only from the standpoint of the members of the Bar and the Court Reporters, but I think of the witnesses and the various parties who are engaged that we should not sit in July and August. But it did occur to me the situation might arise when we come to the end of June that maybe another week or two weeks would finish the evidence and whether in those circumstances we would be sitting those two weeks or just get up and start again in the Fall, I do not know. The thought I had in mind was if a week or ten days or thereabout in July might finish the evidence, that while we take holidays in July and August we do not usually take all of them, we would be in better shape to have the Argument lined up in September.

MR. FENERTY: That leaves it just as much up in the air as ever.

Discussion.

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THE CHAIRMAN: Mr. Harvie?

MR. HARVIE: I am inclined to the view that if there is any practical way of not sitting during the long vacation we should not. But if there is any way we can expedite matters in the long run such as Mr. Chambers suggests we should give that consideration. As far as holidays are concerned, I think maybe it is true that very few of us are fortunate enough to be able to take the two months but some of us, as in my own case, have partners and we have to divide the holidays. In view of the school situation, we would like to be able to take our holidays while the children are out of school and that is particularly true I think in both my case and that of my partner. It would really mean that so far as we are concerned, and I am only using this as an illustration, that there would be no undue difficulty in sitting up till maybe the first week in July if we are accomplishing something.

MR. McDONALD: I think this is a long and painful process and if we are going to take two months' holidays in the summer, I think we should sit at least five days a week in June. That is the position is simply this, we want to get this evidence in and the thing decided reasonably soon.

THE CHAIRMAN: I agree it is a painful process and when am I going to do the rest of my duties sitting five days a week in June?

MR. McDONALD: Well, make it four. I think we should endeavour to get all the evidence in before the first of July.

THE CHAIRMAN: I go back to Edmonton and many of you have applications, and giving no thought to the fact that I have been here three days, you want your business done just as fast when I get back to Edmonton as if I had been there

five days. I do not think it can be done, Mr. McDonald.

Quite frankly I will tell you I am not going to do it.

MR. McDONALD: Well maybe we can extend the time of sittings during the day. I am very anxious to have this evidence in before the 1st of July and then finish off in September. If not, we are going to be into another year before we have anything definite settled.

MR. FENERTY: I would not want the Board to get the impression when I suggest we should not sit during July and August that, as Mr. Harvie said, I was looking forward to two months' holidays. I think the situation is all offices have to arrange the members' holidays.

THE CHAIRMAN: Yes, they have to divide the time.

MR. FENERTY: My friend Mr. Harvie suggested that he and his partner would like to have their holidays when the children are out of school and I agree. But if I do not get the first two weeks in July, then I shall not get any holiday this summer. And I want a holiday if I can get it.

THE CHAIRMAN: What do you say, Mr. Blanchard?

MR. BLANCHARD: I had assumed from conversations I had had with you, Mr. Chairman, and other members of the Inquiry, that we will not be sitting in July. I have made arrangements in consequence for an accommodation from the 1st of July and I cannot change it because there is not any other accommodation available.

THE CHAIRMAN: We are not going to sit in July. The real question is are we going to sit in August?

MR. BLANCHARD: I am prepared to go on in August but I suppose that will interfere with somebody else's plans.

THE CHAIRMAN: I think perhaps we had better adjourn consideration of this until the last week in May. At that time we will know how much progress we have made and then

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perhaps we can come to some decision. I am satisfied of this, that we have to give the Court Reporters six weeks anyway, so that two of them can go away and then the other two. I think a six weeks' adjournment is inevitable. I think we cannot get away from that, so we will leave consideration of it until the last week in May.

MR. CHAMBERS: If the six weeks' holidays is inevitable - and I am inclined to agree with that - the same reasons that apply as to why certain parties will not be available in July will probably apply in August and it does occur to me that probably we should make it eight weeks.

THE CHAIRMAN: Of course we must not be altogether selfish in considering the members of the Bar. There are a number of witnesses who are entitled to just as much consideration as anyone else. Well we will leave further consideration of that until the last week in May. I understand there is a question of jurisdiction to be raised. We may as well deal with that now.

MR. HARVIE: Before we leave that other part, I take it is definite that there will be at least a six weeks' adjournment.

THE CHAIRMAN: Quite definite.

MR. HARVIE: That is six weeks from the 1st of July till the middle of August?

THE CHAIRMAN: That is right.

MR. HARVIE: And anyone is free to make arrangements during that period?

THE CHAIRMAN: Yes.

MR. HARVIE: And when we speak to it again, it will be to deal with the other part of August?

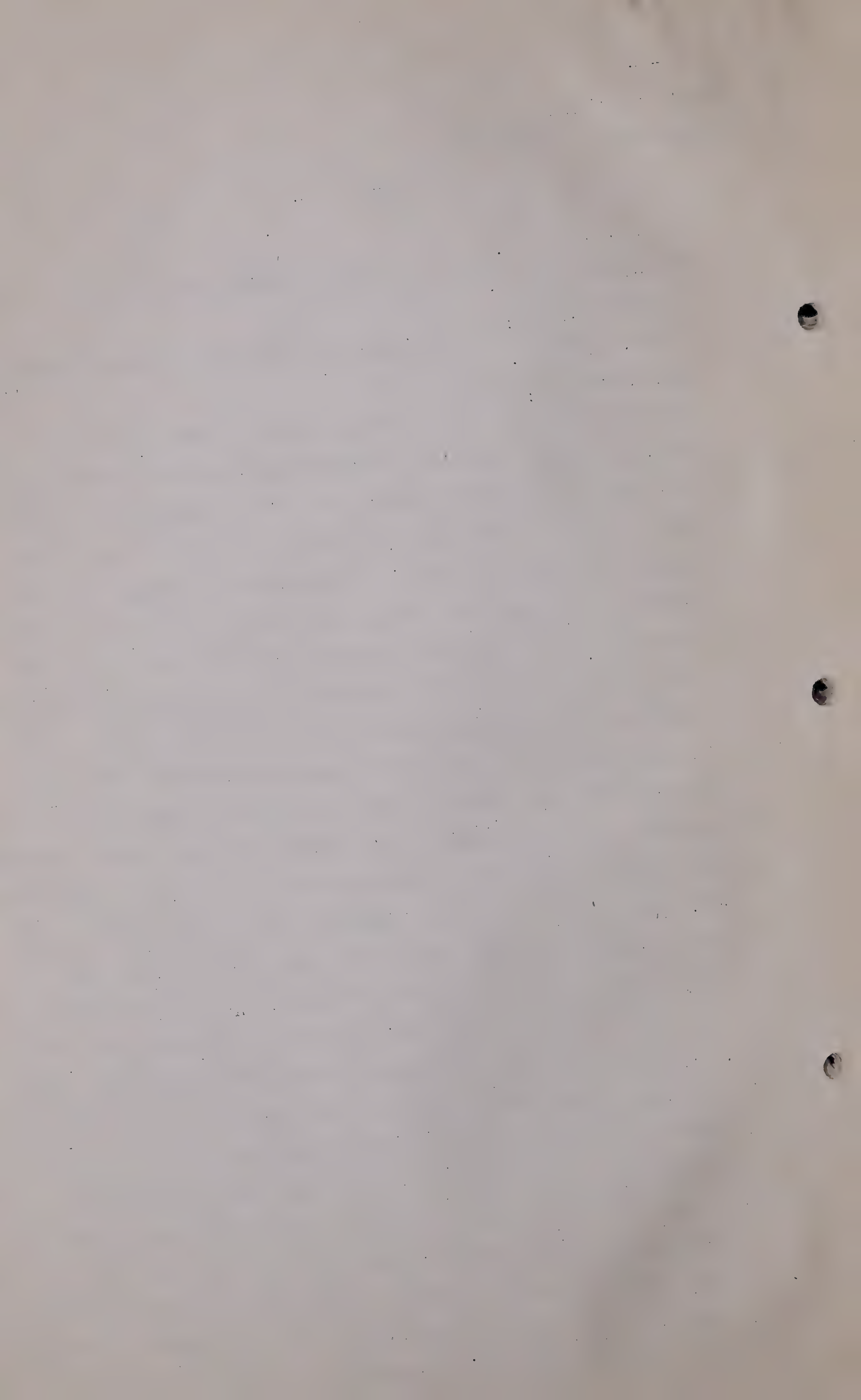
Discussion.re jurisdiction.

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MR. CHAMBERS: I would like the last part of August myself.

THE CHAIRMAN: You could brief an efficient junior, Mr. Chambers.

MR. FENERTY: If the Board pleases, before we proceed with the Inquiry, we have learned or been advised that Dr. Boomer will not be taking part in the Inquiry for perhaps some time. I do not know whether that is true or not. That is the indication we have. When Counsel discussed the situation, I was asked to mention the matter to you in the first instance. Some of us are concerned with the question of jurisdiction. I think we all appreciate that the Chairman could carry on this Inquiry from the beginning to the end but that there might be some question of jurisdiction where two members of the Board have sat and there might be some further question of jurisdiction if Dr. Boomer took part in the Inquiry at a later date. There might be some question of jurisdiction whether he did take part at another date or later date or did not. I think that the concern of all of us is simply and solely with reference to the jurisdiction. At the meeting we held the other day for the purpose of discussing what material would be submitted during the week and how far it would go, this matter was mentioned and the question of all consenting to avoid any question of jurisdiction came up. It was felt by some of us if there is any question of jurisdiction in view of what has gone on before, that consent would not necessarily confer jurisdiction. Now I think we are all exceedingly anxious to avoid any possibility of any of those engaged at any time in this Inquiry, whether briefly or throughout, being in a position to question the validity of any



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finding that might be made after a lengthy Inquiry should that finding not meet with the approval of that party.

THE CHAIRMAN: Any peg upon which to hang an Appeal, Mr. Fenerty, is that it?

MR. FENERTY: Yes. I think that would come within the grounds.

THE CHAIRMAN: In other words, if somebody does not like the Board's judgment, if they can find a peg to hang an Appeal on, they are going to hang an Appeal on that peg.

MR. FENERTY: Yes. And, as far as I am concerned, we are exceedingly anxious to avoid any such question. But that would not prevent us if we thought it was our duty, and if we did not like the result. it would not prevent us from seeking to Appeal on the question of jurisdiction. Similarly with other Counsel.

THE CHAIRMAN: Do you not think it would be fair, in view of your statement, for you to raise specifically the point of jurisdiction which you say may arise by reason of Dr. Boomer's absence. Then if I do not agree with you, you can hasten to the Court of Appeal, instead of waiting until the Inquiry is over, you can hasten to the Court of Appeal and get their decision on the point.

MR. BLANCHARD: The Court sits on June 4th here.

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MR. FENERTY: Well now I have another suggestion which I think should be seriously considered and I am very serious about it and which may avoid my saying more than this, that I am not in a position at this moment to say to the Board that in my view the Chairman does not have jurisdiction. I have no intention of going that far. What I am saying is that it has given all Counsel here some concern as to whether under the wording of the Act, there may be a situation that one member of the Board can act throughout, there may be a situation where two members of the Board can act throughout but there may also be a situation where two members, having acted in part, that one member cannot continue alone. Now I am not prepared to say that that is what the act says but I do say that there is much food for thought in the wording of it and I do not think that can be cleared up here because whatever the views of counsel or the Board, should the matter later come up for discussion by somebody attacking the finding of the Board, then it would be the Court of last resort which would determine that.

THE CHAIRMAN: Mr. Fenerty, and in the meantime you will appreciate thousands of dollars have been spent in costs, that someone will have to pay.

MR. FENERTY: Exactly.

THE CHAIRMAN: Because

MR. FENERTY: Again what I am suggesting is, the thing which you have just suggested is what gives us all concern and what I am suggesting is that serious consideration should be given to the question of whether or not this Inquiry should not be adjourned until both members of the Board can continue, they having started it. I suggest there is no

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reason why any of the parties concerned here or the Chairman of the Board should be put in the position of having to meet that point. We have enough points to meet in this thing, and I suggest that none of us should be put in the position of having to consider something which may result, after months of effort and many thousands of dollars of costs have been spent.

It is not a situation which we want to face here and I suggest also where there is the slightest doubt of what that result may be, that this Inquiry should stop here and now and should proceed only when the Board as constituted is in a position to continue it.

THE CHAIRMAN: But Mr. Fenerty, I am asking you now to present to us argument, not what may be a question on this or maybe a question on that, but I want the questions raised now in argument so that I can rule on them.

MR. FENERTY: My position is this, if the Board has any doubt in the world about its jurisdiction and is going to take the risk of it being right in its opinion, then there is nothing to argue. We will make the best of it, leaving it open to everybody here to raise the question of jurisdiction if they do not like the results. I am not going to say to the Board at this moment "you have no jurisdiction." I do not pretend to know. I did not draft this act and if I did draft it I would probably know less about it, but what I am saying is that in the opinion of all counsel there are grounds for concern over this and I say that when this, - whether or not they are right in having grounds of concern, - that cannot be determined until the mischief is done and that the part of wisdom is not to take that added risk. I am not going to suggest to you that you have not jurisdiction. I am just going to say that that is

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the situation and is it wise to take that risk. If we proceed, I anticipate every counsel will be attempting to reserve their rights and we will soon be faced with the question of whether it amounts to anything or not.

THE CHAIRMAN: That maybe correct, but still I must say I do not admire the attitude of counsel.

MR. FENERTY: What is that?

THE CHAIRMAN: I say if that is so I do not admire the attitude of counsel.

MR. FENERTY: Well now let us look at this.....

THE CHAIRMAN: You are raising a straw man and later on if you do not like it you are going to knock him over.

MR. FENERTY: With all due respect I think the Board is quite wrong in that attitude. It seems to me the position is this, that Counsel engaged in this Inquiry have been faced by a situation which they discovered on Saturday and it is a situation brought about by someone other than Counsel themselves on this Inquiry, I do not know by whom. I might say that I do not appreciate the attitude of whoever brought that situation about when we were in the middle of the Inquiry. I assume there were good reasons for it but I do say this that when we have a situation thrust on us, which is not of our choosing, and which we are anxious to avoid and when somebody, whether it is the Government or not, has created an added hazard to the validity of this Inquiry, that we are therefore, and I will take the responsibility for that, we are very properly taking the position that everything possible should be done to avoid such a situation arising after the Inquiry has been completed. Now if Counsel has, should sit here and "we have something up our sleeve, we do not care what happens

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very much because we will go on and if we do not like it we will attack the question of jurisdiction then", I would say that would be a matter on which to criticize Counsel but I think Counsel should be commended for bringing the matter up now.

THE CHAIRMAN: You are not putting it squarely, Mr. Fenerty, you are saying "perhaps there is no jurisdiction".

MR. FENERTY: I am putting it as squarely as I can. When the Government chooses to say nothing to us, I found out by accident on Saturday that there were not going to be two members of the Board here, it was just by accident that I know anything of it. Now that is Counsels' position, that is the position they have been put in and that is all I have to say.

MR. CHAMBERS: I agree, Sir, with many things that my learned friend Mr. Fenerty says.

THE CHAIRMAN: Are you prepared to argue the point of jurisdiction?

MR. CHAMBERS: No I am not but I do take the position that I think there is very grave doubt.

THE CHAIRMAN: Why do you not argue the point then?

MR. CHAMBERS: I do not think it will get it any further. I submit with deference if you decide you have jurisdiction the hazard is still there and I do submit further even if we had an interim judgment of the Court of Appeal there would still be the element of doubt left and Counsel, I do submit, has raised it in the interests of saving expense and if I agreed or wanted to agree that I will not raise the question of jurisdiction I am not protected unless every person directly or indirectly interested in this hearing agreed to be bound by its results, that is the position we are faced with. Some of us might want to agree but we cannot safely do so because we

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cannot bind somebody else who may be affected by the order and insure that they will not attack it.

THE CHAIRMAN: To what extent would it be bad, Mr. Chambers, supposing Dr. Boomer is away, as I expect he will be, for two weeks and then he comes back....

MR. BLANCHARD: You said "two weeks"?

THE CHAIRMAN: Two weeks more, three at the most. Then he comes back, now what is the position then, do you say that that which I did while he was away, if I sit alone, will be bad, or that the whole Inquiry is bad from the beginning.

MR. CHAMBERS: The whole thing?

THE CHAIRMAN: Or is it only bad during the period he was away.

MR. CHAMBERS: I say the final order which was made would be subject to attack and the whole thing might be held bad.

THE CHAIRMAN: Well I was away on the afternoon of the 27th of March, if the thing is bad because Dr. Boomer is away now, it is bad because I was away on the 27th of March.

MR. FENERTY: That might be but if the Board pleases, I was somewhat interested in the remark that you did not admire the attitude of Counsel, because I might as well be quite frank about this, I do not think we merit that criticism, and I would suggest to the Board that you tell us what you think the attitude of Counsel should be and perhaps we can follow the suggestion you would make.

THE CHAIRMAN: I want to have the point argued and nobody wishes to argue it.

MR. FENERTY: Because we think our attitude is correct and if you have any suggestion as to what we should do where

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this question is raised through no fault of ours...

THE CHAIRMAN: You say, Mr. Fenerty, there may be no jurisdiction. We have no jurisdiction that is all you say. Now I want some proper grounds upon which you found that statement.

MR. HARVIE: It occurs to me, Mr. Chairman, that before we can be fairly asked to argue that we must know what the situation is. This is the first time I knew that Dr. Boomer was not to be here. I had heard rumours that he was to be away for two months. Now as indicated by you it may be only another week or two weeks, or even one week.

THE CHAIRMAN: Two weeks at the least. I never said one week.

MR. HARVIE: Now that may be a very simple matter, if we are going to adjourn for one week anyway....

THE CHAIRMAN: How long an absence does it take to make the thing bad, half a day, a day, two days, a week, a month, two months? I was away for a half a day. Nobody suggested there was any lack of jurisdiction then and if there is lack of jurisdiction now then certainly there has been that point before us since the 27th of March.

MR. FENERTY: Do I understand you to say that you will be away for awhile and that Dr. Boomer will be handling it?

THE CHAIRMAN: No, I say I was away Mr. Fenerty for the afternoon from 2.15 on the 27th of March until five minutes to four, when Mr. McCutchin was giving his evidence.

MR. FENERTY: I do not know, I suppose the same thing might apply.

THE CHAIRMAN: That is what I am asking. How long does it take, five minutes, half an hour, an hour?

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MR. FENERTY: I do not know. We might take the rule of the Supreme Court Appellate Division for our guidance. I make that suggestion, Sir.

THE CHAIRMAN: All right, Mr. Harvie, I was asking you I think how long, what length of an absence would it take for jurisdiction to be lost.

MR. HARVIE: I really do not know and I would not care to express an opinion as to that, or as to what this act means until we have had ample time to give it consideration, knowing that to be the case, and I take it as a great responsibility when I have to advise my client as to the situation, I take it as a grave responsibility on my part to either tell my client to go ahead and take no objection, to go to the expense which will be necessary to finish the Inquiry and then possibly have some other party take an exception, or alternatively the reverse.

THE CHAIRMAN: Well when you take exception to jurisdiction, Mr. Harvie, is it not usual to advance^{the} grounds upon which you say there is no jurisdiction?

MR. HARVIE: I would think so but I think it is also usual to give some opportunity for Counsel to give consideration to the situation. I do not think any Counsel should be asked on a moment's notice to get up here and argue a thing as vital that.

THE CHAIRMAN: When did you have this meeting that Mr. Fenerty speaks of?

MR. BLANCHARD: Friday.

THE CHAIRMAN: And was the point so dreadfully involved that between last Friday and today you have not been able to evolve any grounds upon which you say jurisdiction has gone.

MR. CHAMBERS: Frankly I was under the impression that some communication would be made with Mr. Steer, when he is not

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here, I have not heard from him, to see whether some practical way could not be worked out.

MR. HARVIE: So far as we are concerned we wish to go ahead. We want to go ahead as expeditiously as possible and we will do anything within reason that we have power to do, to assist.

THE CHAIRMAN: To me it looks as if you want to create the position that if you like the order you will say that the jurisdiction is all right and if you do not like the order you would expect to take an appeal and challenge its validity.

MR. HARVIE: What can I do?

THE CHAIRMAN: If I say I am going ahead with the hearing, there are two things you could do or three perhaps, one is to carry on and then say "you had no jurisdiction", the other is to stay away and the third is to go to the Court of Appeal?

MR. HARVIE: There is no question of that and that is why I think Mr. Fenerty was so absolutely correct from a professional standpoint, to get up and bring the point to the Board's attention now before anything else is done.

THE CHAIRMAN: Well tell me the grounds on which you suggest there is no jurisdiction.

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MR. HARVIE: I am sorry I cannot do that on a basis that would be fair to me or to the Board on such short notice.

MR. CHAMBERS: The concern that I have, sir, is this, if it were argued and decided by you one way or the other it would not remedy it.

THE CHAIRMAN: But at least, Mr. Chambers, you would have a ruling upon which you could go as I suggested to Mr. Harvie and if you object to jurisdiction. It is just like in the Police Court when you object to the Police Magistrates' jurisdiction. Where does it get you?

MR. CHAMBERS: I suggest that if I take it here my rights are preserved and just because it happens that I did and the Board rules it is going on I still have my rights and I tell you frankly if everybody concerned in this thing will not attack the order I am prepared to agree but I do not see that the point can be answered short of that except by adjournment of everybody directly affected agreeing.

THE CHAIRMAN: Why was the point raised?

MR. CHAMBERS: Beg pardon?

THE CHAIRMAN: Why was the point raised?

MR. CHAMBERS: Because somebody not represented here this morning can put us all in the position of having attended day after day and even although if we are all in favour of the order somebody else might upset it.

MR. HARVIE: I would feel seriously if I was in the position of being criticised a month from today by my client that this proceeding is all set aside, that I did not bring the matter to the attention of the Board today.

MR. FENERTY: I do not think it is the concern of any

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Counsel here that we have one Member of the Board sitting, because I think probably we will all agree that the Chairman could have sat on this by himself at the beginning and we would be quite prepared for it but solely because of my anxiety to have no such question raised by some person not here this morning undoing the work of months.

THE CHAIRMAN: Have you anything to say Mr. McDonald?

MR. McDONALD: The situation is quite different to what was given to me on Friday. I understood Dr. Boomer would be away until July or August.

THE CHAIRMAN: All right Mr. McDonald, will you tell me, no one else has told me, what difference it makes if he is gone half a day or two months to the legal point presented- I was going to say presented, but it is not being presented - what difference does it make to the legal point if he is gone half a hour or two months if he is absent and it is bad, what length of time is needed.

MR. McDONALD: Well the incident to which you refer if correct, I cannot see.

THE CHAIRMAN: When you have the transcript do you consider that necessary?

MR. McDONALD: No it could be taken as read. It is done at the Police Court every day, but the point is we will very likely be adjourning tomorrow and as far as this week is concerned we will be losing only one day and maybe if we can be assured Dr. Boomer will be back on the 21st it might be the better part of discretion to adjourn to the 21st and we can communicate with him.

THE CHAIRMAN: When he left his instructions were that he would be gone for one month.

[illegible]

Figure 1. The effect of the concentration of the H_2O_2 solution on the amount of the released H_2O_2 from the H_2O_2 -loaded hydrogel. The amount of the released H_2O_2 was measured by the amount of the released H_2O_2 from the H_2O_2 -loaded hydrogel. The amount of the released H_2O_2 was measured by the amount of the released H_2O_2 from the H_2O_2 -loaded hydrogel.

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MR. McDONALD: What is worrying me more than anything -

THE CHAIRMAN: And that would bring you to the first week in June and we won't be sitting then because there is not a Court room available and you will have three weeks in June.

MR. McDONALD: Is there any possibility even if we did do that that Dr. Boomer's work would carry on while he is away. Is there a possibility that Dr. Boomer would not be available in June?

THE CHAIRMAN: I have no idea.

MR. McDONALD: My position is I do not see how I can contact my individual clients and give assurance to the Board by way of consent.

THE CHAIRMAN: Are you prepared to argue the point as to whether there is or is not jurisdiction. All I have so far is a vague suggestion there may be no jurisdiction. What is the matter? Is it so obscure or difficult you cannot even state it in simple terms, none of you?

MR. McDONALD: No, I am looking at it from the frank standpoint so much work has been done and the Board at the beginning needed a technical adviser and I did not know of any better party to assume that responsibility than Dr, Boomer and I would like to see that Member of the Board here. That is my opinion. I am not looking for a way to get out of it.

THE CHAIRMAN: Well from now on, Mr. McDonald, I do not need a technical adviser. I did in the first three weeks of the hearing but from now I do not need one. I am sure of that.

MR. HARVIE: Mr. Chairman, if it is something for

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you to make a ruling on I would submit that inasmuch as this Board constituted of two Members, one the Chairman of this Board and one the Chairman of the Natural Gas Conservation Board, and that they have been sitting as two Members up to the present time with the possible exception of the half day which may or may not be possible to cure, that the question arises as to whether one Member of the Board has jurisdiction to continue the hearing.

Sub-section (2) of Section 3 purports to give the jurisdiction of the Board, when there are vacancies, "In the case of the absence of any Member or Members of the Board, or of his or their inability to act, and in the case of any vacancy or vacancies on the Board, the Member or Members of the Board present may exercise all the jurisdictions and powers of the Board."

Now I am just going to raise one point and I do not mean by that that I might not have a lot of others or several others, if I had the opportunity of giving the whole matter the consideration which it requires, but I do raise the point that inasmuch as this Board was constituted with two Members and has been sitting as a Board of two Members, now that there is one absent, I think there is possibly no jurisdiction in the remaining Member to carry on.

THE CHAIRMAN: Why do you think possibly, Mr. Harvie. Do you think there is or is not jurisdiction?

MR. HARVIE: I submit it very seriously, but have not had the opportunity of considering it fully.

THE CHAIRMAN: But I want your settled opinion, do you think there is jurisdiction or there is not. Let me put this to you, suppose Dr. Boomer died?

The first part of the paper is devoted to a discussion of the
theoretical aspects of the problem. It is shown that the
problem is equivalent to a problem in the theory of
differential equations. The second part of the paper is devoted
to a discussion of the experimental results. It is shown that
the experimental results are in good agreement with the
theoretical predictions. The third part of the paper is devoted
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agreement with the experimental results.

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MR. HARVIE: We would have to deal with that situation, if he was dead. We would at least know that he is absent. He is absent and whether his absence is essential absence or anything else we do not know anything about the situation and whether that is material or not I do not know.

THE CHAIRMAN: If he is dead he is absent.

MR. HARVIE: Yes and also dead.

MR. CHAMBERS: I submit that may not be what is meant by absence.

THE CHAIRMAN: Then we would have to start all over again.

MR. CHAMBERS: I have made my position on the record and my only concern is as I say again that the matter would be subject to attack by any party. I am prepared to agree if everybody interested would not attack the order and waive it. Apparently we are not in that position and I am therefore making a formal application that the Board will adjourn the hearing until Dr. Boomer returns in view of the doubt and I submit there is some real doubt because every Counsel I have spoken to entertains I am satisfied, a bona fide doubt about the matter and therefore I am making this application that the Board adjourn the hearing until Dr. Boomer returns because the two man Board having assumed jurisdiction there may be a very great question as to any order made ultimately.

THE CHAIRMAN: All right, and if Dr. Boomer had died?

MR. CHAMBERS: I submit I am not called upon to deal with that at the moment.

THE CHAIRMAN: No. Have you any ideas on the subject Mr. Blanchard?

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MR. BLANCHARD: Well apparently until my learned friend Mr. Chambers applied now for an adjournment on the grounds there might not be jurisdiction, there was no formal application before you and there was less for the Chairman of the Board to decide what he was going to do in view of the warnings given by Counsel. I have not the slightest doubt that the position taken by Counsel is a position that they feel bound to take, although Mr. Chambers did suggest that so far as his clients are concerned they are prepared to agree not to attack if all other parties agree. It has been pointed out that all parties affected may not be at this stage before the Board. But what concerns me is not the question of the adjournment at the present moment, but it is quite clear that Counsel are reserving the right to attack the final decision of this Board on the ground of jurisdiction if the Board having commenced with two Members at any time proceeds with less than two Members. Now that has already occurred. It has occurred when you, Mr. Chairman, perhaps on one occasion and if I am not mistaken it has occurred on several occasions when Dr. Boomer was not present throughout the whole hearing. So we are faced now with exactly the same position with reference to attack which Counsel are apparently prepared to waive unless some one else is affected by it. What is the position. We may adjourn now until Dr. Boomer returns, if he returns, because no one can definitely say he will return at any time.

MR. FENERTY: Should not some one say he should return at some time.

THE CHAIRMAN: Do you realize where Dr. Boomer is. He is in a danger zone and he may not come back.

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MR. HARVIE: We have no official word as to where he is.

MR. FENERTY: Mr. Blanchard says if he returns. I think that is a serious matter. We started with a two man Board and I think the parties before the Board should know something about it. How it is to be constituted and when Dr. Boomer is to be back and we should not be left that way.

MR. BLANCHARD: No one is trying to take advantage of my learned friend or anybody else. I thought I was not at liberty to state where Dr. Boomer is or what he is doing at the present time. It is a matter of real great public concern no doubt, or at least great concern, and how far I am at liberty at the present moment to say I do not know.

MR. HARVIE: I will accept your statement just as you have made it.

MR. BLANCHARD: Well I cannot say that there is any assurance, definite assurance, that Dr. Boomer will return, or that if he does return when it will be exactly.

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MR. BLANCHARD: All that can be said is that it was anticipated that he would return within a certain time, but suppose we adjourn now and wait for Dr. Boomer to return, have we any assurance that the final order will not be attacked on the grounds already suggested, namely, the absence of one member of the Board, and that being the situation, and in view of the fact that Counsel appearing for everyone feel that they must in justice to their client, take this position at the present time, it seems to me that the sooner the matter is determined by the Appellate Division the better. The provisions as to appeal, of course, which are in Section 44, that is the only section that deals or that suggests that that can be done within one month, or such further time as a Judge of the Court may fix, an appeal may be taken from any order, ruling or decision and so on.

Now I do not think that any Counsel here desire to take the steps to challenge the ruling that may be made now. They may. But it apparently is left to the Board. I think that the Board may refer the matter to the Appellate Division under the Constitutional Questions Act. It could be referred that way and no doubt the matter may be determined by the Court of Appeal at a sittings here on June 4th. I do not know whether there is an earlier sittings in Edmonton before which the matter could be argued. I do not think it should take very much preparation with regard to a very short section like this.

It has occurred to me as to what would happen if through some occurrence, unavoidable occurrence, Dr. Boomer on the very last day of this hearing should unavoidably be absent and it should occur that he could not return. Would all the proceedings that we have gone through

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be a nullity and we would have to start ab initio again. It does seem to me that the present position is one contemplated by this section, otherwise the Board is left open to the possibility of the cost of a tremendous lot of money in this matter on the part of every party. I had hoped that perhaps all Counsel would feel that they could agree that there would be no attack on the proceedings by reason of the absence of Dr. Boomer. I am not quarrelling with them for one moment for refusing to do so because they represent various parties and some of them are not here.

THE CHAIRMAN: It makes no difference, Mr. Blanchard, because Mr. Fenerty is here and he is not going to consent.

MR. BLANCHARD: Of course he represents 80,000 people and that is a lot of people.

MR. FENERTY: Do not misunderstand me. It may be that every Counsel here would be prepared to consent if they felt that that would cure the situation, but I do not think that any Counsel is prepared to consent for say John Smith, who is not here this morning, and he can attack the result if he does not like it even if the rest would not.

MR. BLANCHARD: Everyone is afraid of the other party.

MR. HARVIE: There is just one suggestion. We are very anxious to have the inquiry proceeded with. To the question of jurisdiction in this Board in view of the absence of one member for one day, that is something we have all had notice of and may be dealt with or possibly cured by calling that witness and having that evidence submitted afresh.

But by way of making a suggestion that might expedite the proceeding without any question of

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the jurisdiction as far as future proceedings are concerned, I would refer the Board to Section 11 of the Act, which says "The Board or the Chairman may authorize any one of the members to report to the Board upon any question or matter arising in connection with the business of the Board, and that member shall, when so authorized, have all the powers of the Board for the purpose of taking evidence or acquiring the necessary information for the purpose of his report, and, upon his report being made to the Board, it may be adopted as the Order of the Board, or otherwise dealt with as to the Board seems proper."

As far as my client is concerned, we are only too pleased to go ahead before the present Chairman of the Board, on, we will say, the valuations and everything other than maybe some of the technical phases. As those arise I think we could consider as to whether that would be agreeable at that time. My own view is that we would be agreeable to have the Chairman of the present Board carry on an investigation entirely from now on on that phase. I am certainly quite prepared to agree that the Chairman should continue with the present phase.

THE CHAIRMAN: I am going to grant Mr. Chambers' application and adjourn to the 11th of June.

MR. BLANCHARD: To what date, sir?

THE CHAIRMAN: The 11th of June.

(The Hearing was then adjourned to June 11th, 1945.)

